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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

NO. 73-6819

RICHARD BROWN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(Or Petitioner For Writ of Certiorari
To The Supreme Court Of Illinois)

BRIEF FOR RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

NO. 73-6650

RICHARD BROWN,
Petitioner,
vs.
PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

OPINION BELOW

The opinion of the Supreme Court of Illinois is set forth at 56 Ill. 2d 312 (1974).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner relies on the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

QUESTION PRESENTED

Does the giving of Miranda warnings and other intervening sufficiently attenuate the statement from the illegal arrest so as to dissipate the taint?

STATEMENT OF THE CASE

The facts of the case are adequately set forth in the Petition.

REASON FOR DENYING THE WRIT

THE PETITIONER'S VOLUNTARY STATEMENTS WERE NOT TAINTED BY HIS UNLAWFUL ARREST AND WERE PROPERLY ADMITTED INTO EVIDENCE.

The petitioner contends that statements he gave to the police, implicating him in the murder, should be suppressed because his arrest was found to be unlawful. Such a position is without support in precedent or policy.

In Wong Sun v. United States, 371 U.S. 471 (1963), this Court held that a statement given to police officers after Wong Sun had been released from an illegal arrest was admissible against him, "the connection between the arrest and the statement had become so attenuated as to dissipate the taint. (Nardone v. U.S., 308 U.S. 338 (1939))". Wong Sun at p. 491. The principle that statements derived from an unlawful arrest could be admitted into evidence was thus clearly stated and the standard for the determination is the extent of the presence of a connection between the unlawful arrest and the statements.

The federal Courts of Appeals and state supreme courts have dealt with this situation many times since the decision in Wong Sun and have almost always approached the problem in the same way and reached the same conclusion. The totality of circumstances surrounding the statement has consistently been found to be the primary criterion in determining admissibility. Most importantly the voluntariness of the statement is considered. See for example, Alexander v. U.S., 390 F. 2d 101 (5th Cir. 1968); State v. Arruda, 317 A. 2d 437 (R.I. 1974); Bowers v. Texas, 507 S.W. 2d 785 (Tex. 1974); Mulligan v. State, 10 Md. App. 429 (1971); State v. Funchess, 179 S.E. 2d 25 (S.C. 1971); People v. Briggs, 36 App. Div. 2d 790 (N.Y. 1971); State v. Hooper, 25 Oh St. 2d 59 (1971). Also, the proximity to the time of arrest and intervening occurrences are important factors. (See for example, Beard v. Alabama Bd. of Corrections, 413 F. 2d 455 (4th Cir. 1969) (confession after several hours of custody following illegal arrest was admissible); Phelper v. Decker, 401 F. 2d 232 (5th Cir. 1968) (statements made 2 1/2 hours after arrest were held to be admissible); Commonwealth v. Maroney, 348 F. 2d 22 (3rd Cir. 1965) (confession after 5 days of continuous custody and consultation with attorney); Commonwealth v. Daniels, 317 A. 2d 237 (Pa. 1974); State v. Newel, 462 S.W. 2d 794 (1971). Some cases have specifically held that Miranda* warnings alone are sufficient to remove the taint of an illegal arrest. State v. Arruda, supra; Bowers v. Texas, supra; State v. Funchess, supra; State v. Hooper, supra; People v.Brown, 56 Ill. 2d 312 (1974). Only two state courts have adopted an absolute rule forbidding admission of statements following unlawful arrests. People v. Moreno, 491 P. 2d 575 (Colo. 1971); Bynum v. State, 490 P. 2d 531 (Okla. 1971).

The only case in the Supreme Court on this issue since Wong Sun was Morales v. State of New York, 396 U.S. 102 (1969), which case does not lend support to petitioner's view. The case never dealt with the actual issue of whether or not the confession could be admitted. In that case, this Court found that the confession was voluntary but remanded to determine whether the arrest was lawful. The opinion never fully discussed the issue of whether the confession should be admitted. This is evidenced by the fact that the Morales case never even mentioned the Wong Sun decision.

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* Miranda v. Arizona, 384 U.S. 436 (1966)

This limited examination cannot be said to change the clear standard set forth in Wong Sun and followed by almost every state and federal court.

Even considering the Morales case on the merits, it is not similar to the case at bar. In Morales, the defendant was illegally arrested and confessed after only 15 minutes. The contemporaneousness of the confession with the arrest is a ground for distinguishing that case from the present one if indeed the confession in the Morales case was tainted by the illegal arrest. It is clear that the standard set by this court, allowing for the dissipation of the taint of an illegal arrest from a subsequent voluntary confession has been uniformly and properly applied by the lower state and federal courts. The decision of the Illinois Supreme Court in the present case was also consistent with the law as stated by this Court in Wong Sun.

The admission of a voluntary confession after an illegal arrest suffers no constitutional infirmity. The Fourth and Fifth Amendments embody separate and distinct rights. This Court has held that the Fifth Amendment guarantees to the criminal defendant a fair trial while the Fourth Amendment protects the individual from invasion of his privacy by governmental intrusion and is not an "'adjunct to the ascertainment of truth'." Schneckloth v. Bustamonte, ____ U.S. ____ , 93 S. Ct. 2041, 2055 (1973).

The Fourth Amendment cannot properly serve as an enforcer of Fifth Amendment rights except perhaps when circumstances are such that infringements of both constitutional guarantees are so commingled as to make them one. This was the obvious import of the Wong Sun decision. Officers had entered Blackie Toy's home unlawfully and pursued him to his bedroom when he fled upon learning the identity of the officers. The statements Toy made immediately upon the officers entry into the room and while they were handcuffing him were suppressed. These statements were so inextricable from the circumstances of the immediate arrest that they were held to be tainted by it. at p.484-485 484-485.

The instant situation does not fall within the very narrow category of cases where incriminating statements are tainted because of their inclusion within the immediate surroundings of the unlawful conduct of the police. The petitioner did not make a statement when he was confronted by police in his apartment. After several hours of custody, which included some admittedly non-hostile interrogation and a search by automobile for his accomplice, the petitioner voluntarily made two formal statements, both preceded by Miranda warnings.

It should be noted also that the statements were attempts at exculpation by the petitioner, thus rendering his statements even more voluntary and implying waiver of any residuum of rights infringed by the unlawful custody. Cf. Samora v. U.S., 406 F. 2d 1095 (5th Cir. 1969) at p. 1099. Such a positive and willful act, removed in proximity of time and place from the unlawful conduct of the officers and made in full awareness of his constitutional right to remain silent, cannot be described as tainted by the arrest.

CONCLUSION

WHEREFORE, respondent respectfully requests that the petition for Writ of Certiorari be denied.

Respectfully submitted,

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